

NO-FAULT INSURANCE HEARINGS

HOUSE OF REPRESENTATIVES

APRIL 22, 2015

TESTIMONY OF WAYNE J. MILLER

MILLER & TISCHLER, PC

FARMINGTON HILLS, MI

248-945-1040

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I. INTRODUCTION

Good afternoon, Mr. Chairman and committee members. Thank you for the opportunity to share my thoughts at this critical juncture in the history of our auto no-fault insurance law. My name is Wayne Miller. I am an attorney of 35 years experience. Among my clients are major hospital systems, large medical practices and traumatic brain injury (TBI) rehabilitation facilities. I have served as an Adjunct Professor of Law at Wayne State University School of Law since 1998. I am co-author of the no-fault textbook that is in use in 3 of Michigan's law schools.

II. INSURANCE DEMANDS FOR REFORM: "MORE, MORE, MORE"

The comment was made in hearings on April 21<sup>st</sup> that those who oppose the reform simply repeat the mantra of "no, no, no" without offering substantive suggestions. Yet, there have already been significant reforms (legislatively and judicially in the last 2 years). These reforms are significant and they are entirely in the direction of constricting no-fault coverage. I will briefly summarize those reforms in a moment. But rather than saying "no no no", we are perpetually being asked to submit to further reform. So the mantra would be "more more more."

The insurance industry makes these demands for more reform in the manner of restricting benefits, as they have done for the last 25 years. There no proof that benefits must be slashed in order to achieve premium reduction. There is no guarantee that meeting their demands will result in significant and lasting premium relief. I am perplexed that such a negotiation posture is given credence.

III. RECENT JUDICIAL REFORMS

**A. FRAUD: BAHRI**

FRAUD IN A SINGLE BENEFIT CLAIM WILL WIPE OUT THE ENTIRE ENTITLEMENT, INCLUDING THOSE OF SERVICE PROVIDERS. The Court of Appeals relied on *TBCI v State Farm Mut Auto Ins Co*, 289 Mich App 39 (2012) in *Bahri et al v IDS Property Casualty Ins Co*, \_\_\_ Mich App \_\_\_ (2014). Plaintiff made a claim for replacement services during a period when surveillance video captured plaintiff bending, lifting, driving and running errands. Unlike *TBCI* where a jury found fraud, the trial court in this case granted defendant's motion for summary disposition. The policy in issue in *Bahri* had a general fraud exclusion similar to that of *TBCI*.<sup>1</sup> The Court applied this fraud provision to the service providers "[b]ecause intervening plaintiffs stood in the shoes of the named insured..."

**B. CAUSATION: BOERTMANN**

RECOVERY FOR PSYCHOLOGICAL INJURIES FROM WITNESSING A MOTOR VEHICLE ACCIDENT ARE LIMITED. *Boertmann v Cincinnati Ins Co*, 493 Mich 898 (2012), recon den, 493 Mich 963 (2013), plaintiff was driving a car behind her son Chris, who was operating a motorcycle. Plaintiff saw a vehicle make a wide turn into Chris's path and saw the two vehicles collide. Plaintiff proceeded to the parking lot where Chris landed after the collision and went over to him. He was severely injured and was pronounced dead approximately 30 minutes after the collision. Plaintiff suffered from and was treated for mental health problems that her psychologists opined were caused by witnessing her son's death. The Supreme Court reversed the Court of Appeals holding:

"Here, as tragic as the motor vehicle accident that caused the death of plaintiff's son was, the causal connection between plaintiff's injury, i.e., post-traumatic stress disorder, and the 'use of a motor vehicle as a motor vehicle' is not 'more than incidental, fortuitous, or 'but for.' Any injury suffered by plaintiff was too attenuated to be compensable. Plaintiff herself was in no way involved in the motor vehicle accident; she was not on the motorcycle with her son, nor was she in the vehicle that struck her son; and she was not struck by the motorcycle or by the vehicle that struck her son. Instead, just as with the plaintiff in *Keller*... [cit om]..., plaintiff was simply a bystander who very unfortunately witnessed an accident that resulted in her son's death. Accordingly, just as with the plaintiff in *Keller*, plaintiff is not entitled to no-fault benefits."

**C. CAUSATION: MCPHERSON**

INJURIES FROM FIRST MOTOR VEHICLE ACCIDENT THAT CAUSE A SECOND MOTOR

---

<sup>1</sup> "There is no coverage under this policy if you or any other person insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy."

VEHICLE ACCIDENT ARE NOT COVERED. In *McPherson v McPherson et al*, 493 Mich 294 (2013), the plaintiff was injured in a 2007 motor vehicle accident resulting in a seizure disorder. In 2008, plaintiff apparently suffered a seizure while riding his motorcycle. He lost control of his motorcycle, struck a parked car, and suffered severe injuries, including ventilator-dependent quadriplegia. Plaintiff argued that the 2008 motorcycle accident arose out of the 2007 motor vehicle accident. In other words, plaintiff argued that his injuries in the 2008 accident arose out of the 2007 accident for purposes of no-fault §3105. The Court disagreed, holding:

“In this case, the causal connection between the 2008 spinal cord injury and the 2007 accident is insufficient to satisfy the ‘arising out of’ requirement of MCL 500.3105(1). Plaintiff did not injure his spinal cord while using the vehicle in 2007. Rather, he injured it in the 2008 motorcycle crash, which was caused by his seizure, which was caused by his neurological disorder, which was caused by his use of a motor vehicle as a motor vehicle in 2007. Under these circumstances, we believe that the 2008 injury is simply too remote and too attenuated from the earlier use of a motor vehicle to permit a finding that the causal connection between the 2008 injury and the 2007 accident ‘is more than incidental, fortuitous, or ‘but for.’” *Thornton*, 425 Mich at 659. [footnote 5 omitted].”

The Court in *McPherson* distinguished *Scott v State Farm*, *supra*, as follows:

“The Court of Appeals held in *Scott* that summary disposition was premature because the plaintiff had raised a genuine issue of material fact whether her hyperlipidemia occurred as a direct result of an injury she had received in an automobile accident or was attributable to other factors. That is, the issue was whether the evidence was sufficient to support a finding that the first *injury* caused the second *injury* in a direct way. In this case, plaintiff claims as fact that his spinal cord injury occurred as a result of the neurological disorder from the first accident in combination with the intervening motorcycle accident. The facts alleged by plaintiff are insufficient to support a finding that the first injury caused the second injury in any direct way. Rather, the facts alleged by plaintiff only support a finding that the first *injury* directly caused the second *accident*, which in turn caused the second injury. Thus, the second injury alleged by plaintiff is too attenuated from the first accident to permit a finding that the second injury was directly caused by the first accident. Though we are troubled by *Scott*’s use of a causal-connection standard this Court has never recognized – that ‘[a]lmost any causal connection will do,’ *id.* At 586 – it is nonetheless clearly distinguishable from this case because plaintiff admits that, absent the intervening motorcycle accident, his spinal cord injury would not have occurred as a direct result of the neurological disorder.”

Notwithstanding the Court’s use of the concept of “direct results” between motor vehicle accident and injury, the authors do not believe that the Court meant to augur a new limitation on the “arising out of standard” of no-fault §3105(1). Rather, this case appears to stand for the concept that the connection between the motor vehicle accident of 2007 and the injury resulting from a separate event in 2008 is too attenuated for purposes of §3105(1).

#### D. ALLOWABLE EXPENSES AND VANS: ADMIRE

INSURER IS ONLY REQUIRED TO MODIFY A VAN FOR WHEELCHAIR USERS, NOT PURCHASE IT. The Supreme Court in *Admire v Auto Owners*, 494 Mich 10 (2013) has now held that only the modifications to the van are compensable. In so holding, the Court overruled a number of contrary Court of Appeals decisions, including *Begin v Michigan Bell Telephone Co, et al*, 284 Mich App 581 (2009) and *Yackish v State Farm Mut Auto Ins Co* (C/A #289671; 2/1/2011) [RB Item #3154], as well as the Court of Appeals decision in *Admire*.

#### IV. RECENT LEGISLATIVE REFORMS

##### A. UNLIMITED DEDUCTIBLES: §3109(3)

For many years, Michigan no-fault insurers were allowed to offer a one-time \$300 deductible for no-fault PIP claims. No-fault §3109(3) USED to read:

“An insurer providing personal protection insurance benefits may offer, at appropriately reduced premium rates, a deductible of a specified dollar amount which does not exceed \$300.00 per accident.”

In a virtually unnoticed amendment, the law was changed effective December 27, 2012. §3109(3) NOW reads:

“An insurer providing personal protection insurance benefits under this chapter may offer, at appropriately reduced premium rates, a deductible of a specified dollar amount.”

In other words, the \$300 limitation has been removed, and there appears to be no limit to the size of the deductible that a no-fault insurer may offer. The purpose of this revision was to permit address the problems with coordinating no-fault coverage with other payors that may have preemptive coordination powers, e.g., Medicare and ERISA plans.

The implications of this change are potentially huge. No-fault insurers could offer huge deductibles (\$10,000? \$25,000? \$100,000?), with concomitant premium savings. Consumers may choose to take high deductibles in the interest of cost-savings. Because a deductible deals with first dollars paid, the premium savings would be far more dramatic than caps (which address the more rare cases that reach higher limits).

##### B. RESTRICTED DEFINITIONS OF MOTOR VEHICLES: §3101

It has long been understood that snowmobiles, motorcycles, farm tractors and ORVs do not independently qualify as motor vehicles. The no-fault law has now been amended effective January 2015 to include golf carts in the list of things that can never be a “motor vehicle.” MCL

500.3101(2)(h)(v).

**C. BROADENED DEFINITION OF OWNER: §3101**

§3101 has been amended effective January 2015 to make clear that motorcyclists can be constructive owners if they “have the use” of the bike for more than 30 days. This effectively overrules the case of *Auto Owners v Hoadley*, 201 Mich App 555 (1993). MCL 500.3101(2)(k)(ii). Now motorcyclists can be owners by being title holders or by having the use for more than 30 days, just as is the case with other motor vehicles.

**D. BROADENED DISQUALIFICATION FOR UNLAWFUL TAKING: §3113(a).**

No-fault §3113 has been amended to make the stolen vehicle disqualification more stringent:

“A person is not entitled to be paid personal protection benefits for accidental bodily injury if at the time of the accident . . . : (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.”<sup>2</sup>

**E. NEW DISQUALIFICATION FOR EXCLUDED DRIVERS: §3113(d)**

No-fault §3113(d) was added in January 2015. Persons are now disqualified if:

“The person was operating a motor vehicle or motorcycle as to which he or she was named as an excluded operator as allowed under section 3009(2).”

**V. AGGRESSIVE INSURANCE CLAIMS HANDLING: SIU; PENALTIES; AND IMEs**

The discussion of fraud and the proposed fraud legislation suggest that insurers are hapless and helpless victims of rampant fraud. In truth, insurers are extremely aggressive in challenging all claims, not just the ones that are suspected of fraud.

**SPECIAL INVESTIGATION UNITS (SIU).** Insurers now commonly use their SIU units to investigate doctors and claimants that they suspect of fraud, and to pursue litigation against those targets.

**NO-FAULT PENALTIES.** No-fault §3148(2) provides that insurance companies may also recover

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<sup>2</sup> §3113(a) was amended in January 2015 to adopt the above language. . The statute formerly was worded: “(a) *The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle.*”

attorney fees where the Court finds the plaintiff's claim was fraudulent or excessive. In this regard, the statute states:

“Section 3148(2) – An insurer may be allowed by a court an award of a reasonable sum against a claimant as an attorney's fee for the insurer's attorney in defense against a claim that was in some respect **fraudulent or so excessive as to have no reasonable foundation**. To the extent that personal or property protection insurance benefits are then due or thereafter come due to the claimant because of loss resulting from the injury on which the claim is based, such a fee may be treated as an offset against such benefits; also, judgment may be entered against the claimant for any amount of a fee awarded against him and not offset in this way or otherwise paid.”

**INSURANCE MEDICAL EXAMINATIONS (IMEs).** No-fault insurers routinely use physicians who are retained to give brief examinations (what we call “drive by” exams) that predictably result in opinions that insurers use to terminate benefits. Insurers make termination decisions based on these reliable IME doctors, and ignore the opinions of treating physicians. The IME doctors are highly paid to ensure predictable and reliable opinions. They seldom disappoint. Attached are deposition transcripts and 1099 forms that confirm large payments by insurers to various IME doctors. These documents have been obtained through litigation and are matters of public record. Examples:

Phillip Mayer, MD. Orthopedic spine surgeon, retired as an active surgeon in 2005. His income from IMEs reached \$698,143 in 2011 and \$737,107 in 2012.

Phillip Friedman, MD. Neurosurgeon. Has admitted to \$500,000/year in the last couple of years.

Stanley Lee, MD. Spine surgeon. Has admitted to an income of \$750,000 to \$1 million per year, with \$900,000 in 2013.

Scott Monson, M.D., who has admitted to earning \$7 to \$8 million dollars in income over the years from IMEs.

These are truly just a few representative IME doctors. The use of the IME industry, while permitted under law, is abused by no-fault insurers. Untold millions of dollars are paid to these doctors who predictably and reliably serve to cutoff benefits, as the insurers then tend to ignore the opinions of treating physicians. This is truly a scandal and merits legislative scrutiny.

## **VI. CONCLUSION: ENOUGH IS ENOUGH.**

The aggressive manner of insurance claims handling results in powerful cost containment. What service providers charge becomes irrelevant. What service providers receive is dramatically reduced because termination of benefits are so common. Nevertheless, the above mentioned legislative and

judicial changes over the last couple of years demonstrates an inexorable tide of reform. Yet we still face cries for more, more, more reform, without any proofs or guarantees. It is time for the focus of reform to change from ever more demands for consumer restrictions to an accountable insurance industry.



**COPY**

**IN THE MATTER OF:**

FADI JOJANA

VS.

FARM BUREAU GENERAL INSURANCE  
COMPANY OF MICHGAN

---

**DEPOSITION TRANSCRIPT OF:**

STANLEY LEE, M.D.

Monday, December 15, 2014

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Phone: 855.CORE.LIT / 855.267.3548 or 248.809.3816 Fax: 248.262.7039  
WWW.CORELITIGATION.COM / DEPS@CORELITIGATION.COM

1 patient visit and an IME visit. And the medical  
2 truth is the medical truth. It's very hard for me  
3 to deviate from that.

4 Q. (BY MR. HIRSCH) Well, you make a lot of money off  
5 the insurance companies for these medical exams;  
6 isn't that right?

7 A. I do.

8 Q. You make about between \$750,000 and a million  
9 dollars a year.

10 A. That's correct.

11 Q. Based only on the medical exams.

12 A. That's correct, the consulting work that I do.

13 Q. And that's the bulk of your income from the -- from  
14 the insurance exams; isn't that right?

15 A. That's correct.

16 Q. Okay. And that's from doing what you say is just  
17 two days a week doing exams for insurance  
18 companies; isn't that right?

19 A. That's correct.

20 Q. Okay. And Doctor, you know what secondary gain is,  
21 don't you?

22 A. I do.

23 Q. Secondary gain is -- says that everyone might have  
24 some incentive to give their opinions one way or  
25 the other for other reasons; isn't that right?

Stanley Lee, MD  
8/20/2014

Page 1

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

LATASHA ANTHONY,  
Plaintiff,

and  
DOCTORS MEDICAL, LLC, and  
INFINITE STRATEGIC  
INNOVATIONS, INC., and  
SUMMIT MEDICAL GROUP, PLLC,  
and GARDEN CITY REHAB, LLC, and  
SOUTHEAST MICHIGAN SURGICAL  
HOSPITAL, LLC,

Case No. 12-016577-NI  
Hon. Lita Popke

Intervening Plaintiffs,  
and  
SPINE, PLLC,

Intervening Plaintiff,

vs.  
SHARESE MITCHELL and STATE  
FARM INSURANCE COMPANY,

Defendants.

1           than that?

2    A.    No.

3    Q.    Okay. And do you know how much State Farm pays MES  
4           for this type of work?

5    A.    I don't know.

6    Q.    Doctor, if you know, do you have any accounting of how  
7           much money you make per year doing these types of  
8           exams for insurance companies?

9    A.    I do from the years past, I haven't tallied up my  
10          numbers for this year.

11   Q.    Okay. Well, how about 2013?

12   A.    In 2013 I made about \$900,000 doing this kind of  
13          consulting work.

14   Q.    Only for insurance companies and defendants, correct?

15   A.    I have done some plaintiff work as well.

16   Q.    And that's two days a week, \$900,000 a year?

17   A.    That's correct.

18   Q.    Doctor, would you agree with me that amount of money  
19          would affect your bias in these types of cases?

20   A.    No.

21   Q.    Well, if you make reports to insurance companies, like  
22          State Farm, that are unfavorable to them, do you still  
23          think you would be getting \$900,000 from work from  
24          them?

25   A.    My reports are subjected to peer review, so what that

1 means is, that if I give false testimony, my board can  
2 come down on me.

3 They're also out there for everyone to see  
4 in the report, so I'm sure you will be deposing the  
5 treating physician, they may have a differing opinion.

6 And if I give a report that doesn't hold  
7 water and State Farm takes that to court and loses  
8 hundreds of thousands of dollars on that, that  
9 wouldn't be very good for my business.

10 So in terms of my sustainability of my  
11 business, I believe that the best way I can sustain my  
12 business is with telling the truth and what the  
13 medical evidence shows.

14 Q. Do you often gives reports to State Farm saying that  
15 these patients you evaluated are, in fact, injured?

16 A. If they're injured, then the report clearly reflects  
17 that and reflects the treatment recommendations per  
18 evidence-based guidelines.

19 Q. And what would you say on the average, what are the  
20 percentage of your reports, just like this one, of  
21 these templet reports, that show that there are no  
22 injuries arising out of an auto accident?

23 A. Both in my treating practice, as well as my consulting  
24 practice, I would say that greater than 90 percent of  
25 the people that I see are objectively normal.

1 Q. And your work with MES Solutions would be consistent  
2 with that, that 90 percent of the people you see on  
3 behalf of insurance companies you think are normal,  
4 correct?

5 A. Yes.

6 Q. Okay. Doctor, you're getting paid for this  
7 deposition, I assume?

8 A. Yes, I am.

9 Q. And how much are you getting paid?

10 A. My deposition rate, this is through my private  
11 practice, is 2,000 for the first hour, and then 1500  
12 thereafter, I bill in 15-minute increments.

13 Q. Okay. And State Farm is paying you for this  
14 deposition?

15 A. Mr. Slater has hired more for this deposition and I  
16 believe that his client is State Farm.

17 Q. Okay, do you give many depositions, Doctor?

18 A. I do when I can.

19 Q. And are they usually in Ann Arbor, where we're at  
20 today?

21 A. I could do them here, I can do them in offices, again,  
22 through my private practice, I have full flexibility.  
23 I also give them through MES and through my vendors as  
24 well.

25 Q. Doctor, just briefly, do you have any idea of the

1 STATE OF MICHIGAN  
2 IN THE 48TH JUDICIAL DISTRICT COURT

3

4 MICHIGAN SPINE AND BRAIN  
5 SURGEONS, PLLC (DORAIS),

6

7 Plaintiff,

8

9 v.

No. 12-34775-GC3

10

11 STATE FARM MUTUAL AUTOMOBILE  
12 INSURANCE COMPANY,

13

14 Defendant.

15 \_\_\_\_\_/

16 DEPONENT: STANLEY S. LEE, M.D.

17 DATE: Monday, June 24, 2013

18 TIME: 12:33 P.M.

19 LOCATION: 26400 Lahser Road, Suite 200

20 Southfield, Michigan

21

22 REPORTER: Karen R. Gruskin, CSR-3026

23

24

25

1 APPEARANCES:

2 MR. BRYAN L. SCHEFMAN

3 Law Office of Bryan L. Schefman, P.C.

4 Suite 111, 40900 Woodward Avenue

5 Bloomfield Hills, Michigan 48304

6 (248) 594-2600

7 Appearing on behalf of the Plaintiff.

8

9 MR. WALTER H. SMITH, JR.

10 Julie A. Taylor & Associates

11 Suite 700, 2000 Town Center

12 Southfield, Michigan 48075

13 (248) 945-3829

14 Appearing on behalf of the Defendant.

15

16 Also Present: MR. JUSTIN DLOSKI, Video Technician

17

18

19

20

21

22

23

24

25



- 1 Q. So you do roughly between 12 and 17 reviews per month; is  
2 that right?
- 3 A. For MEG, that's right.
- 4 Q. Are there others that you review defense for?
- 5 A. I do do other independent examinations.
- 6 Q. For whom?
- 7 A. I work with MES, with Consulting Physicians, with ExamWorks  
8 and then whoever else might call for my services.
- 9 Q. And how many do you do a month for MES?
- 10 A. I would say between 20 and 35.
- 11 Q. And how many for ExamWorks?
- 12 A. I just started with ExamWorks up again. Last year I did  
13 between 20 and 30. Right now I do very little.
- 14 Q. Twenty and thirty a month?
- 15 A. A month, yes.
- 16 Q. And Consulting Physicians?
- 17 A. Between ten and fifteen I'd say.
- 18 Q. And would it be fair to say that the vast majority of all of  
19 these reviews are for the defense or the insurance company?
- 20 A. Probably the majority of those are for the defense, yes.
- 21 Q. So if I have my math correct, we're talking about somewhere  
22 between 40 and 60 cases a month?
- 23 A. That's probably about right. Last year I did a thousand  
24 twenty-four.
- 25 Q. And what do you get paid on average per case?

1 A. On average? When I go to these vendors, I get on average  
2 about \$600 per case. And then depending on the amount of  
3 records, the amount of time that it takes me to review  
4 additional or excessive records, I get paid on top of that  
5 as well.

6 Q. So what's the average total billing per case?

7 A. I'd say between seven hundred and eight hundred dollars.  
8 That may be a little on the high side, actually.

9 Q. So roughly between seventy thousand and eighty thousand  
10 dollars per month for case reviews for the defense,  
11 principally; is that correct?

12 A. Last year my total income was \$724,000 for this.

13 Q. That's for the review?

14 A. For total; my business, my consulting business.

15 Q. Do you know what secondary gain is, Doctor?

16 A. Sure.

17 Q. Secondary gain says that everyone might have some incentive  
18 to position themselves one way or the other for other  
19 reasons; isn't that right?

20 A. That's correct.

21 Q. Would you say that between 700 and \$750,000 of consulting  
22 fees a year, you might have some secondary gain to slant  
23 your testimony toward the individuals referring you the  
24 cases and paying you?

25 A. There's that possibility.

1 MR. SMITH: I will just object. It's  
2 argumentative, but go ahead.

3 A. Sure. Of course, there's a conflict of interest or  
4 potential secondary gain.

5 Q. (By Mr. Schefman) How much of your income is derived from  
6 your medical practice?

7 A. Last year I made, I believe, about 300,000 on my medical  
8 practice.

9 Q. So would it be fair to say that your income from your  
10 consulting business is more than double your medical  
11 practice income; is that correct?

12 A. That's what the math shows, yes.

13 Q. Now, your first defense medical exam report is dated  
14 September of 2011; is that correct?

15 A. Yes.

16 Q. And you are aware, are you not, that that involved a claim  
17 from a 2007 collision; is that correct?

18 A. That's right.

19 Q. And you noted in your report that you're aware of the  
20 circumstances of the injury, her car spinning and hitting  
21 the concrete wall abutment on the freeway; is that right?

22 A. That was what was reported to me, yes.

23 Q. And you're not a biomechanical engineer, are you?

24 A. No.

25 Q. And you have not made any calculations of the g-force

Phillip Mayer MD  
2/24/2015

Page 1

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

FRANK C. LEWIS,  
Plaintiff,

-and - Civil Action  
No. 14-1531-NF

MICHIGAN HEAD & SPINE INSTITUTE,  
Intervening Plaintiff

-vs-

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,  
a foreign Insurance corporation.

Defendant.

\_\_\_\_\_/

PAGE 1 TO 101

The Deposition of PHILIP MAYER, M.D.,  
Taken at 32410 West Five Mile Road,  
Livonia, Michigan,  
Commencing at 3:40 p.m.,  
Tuesday, February 24, 2015,  
Before Michelle C. Vining, CSR 2335, RPR

1 amount of time invested in reviewing the records and  
2 preparing the report. I turn that into the  
3 administration of Tri-County Associates of Medicine, and  
4 they determine the fees. And I don't know if there is a  
5 fee that is set across the board for all providers. I  
6 don't really inquire as to that. I never have actually.  
7 So I don't know the exact number.

8 It may vary from provider to provider, and I  
9 can't accurately answer it beyond that.

10 Q. Thank you, Doctor. But the amount that you're expecting  
11 to be compensated for your time for reviewing the  
12 records and preparing the additional report is \$500 per  
13 hour?

14 A. Well, it's approximately. As best I would think it is  
15 in that range.

16 Q. Fair enough, Doctor. Thank you.

17 And I believe I asked you this, but the income  
18 has remained relatively consistent over the past few  
19 years?

20 A. Yes.

21 Q. In fact, I believe you testified it compromises  
22 approximately 50 percent of your income in general  
23 performing these IMEs over the past few years, or is it  
24 more or less?

25 A. It is more than 50 percent.

1 Q. How much more than 50 percent?

2 A. I don't know.

3 Q. Is it close to 100 percent?

4 A. I can't give you a figure on that. My private income is  
5 information that I don't divulge. So I really can't  
6 tell you the percentage, but it is more than 50 percent.

7 Q. I appreciate that, and I'm not asking for a single dime  
8 that you get paid for your private patients. All I'm  
9 trying to find out is if you can give me an estimate  
10 better than 50 percent of how much of your personal  
11 income that you make performing these IMEs?

12 MS. MAGDICH: I'm going to object to the form  
13 and foundation. I think you're now getting into  
14 personal income. That is not discoverable.

15 MR. TEREBELO: That's fine, and I'm not, just  
16 so the record is clear, I'm not asking for a single dime  
17 about your personal income. I just want to know if you  
18 know a percentage of your income in general.

19 A. The answer is no.

20 BY MR. TEREBELO:

21 Q. But it is more than 50 percent?

22 A. The answer is yes.

23 Q. You can't narrow it down any further than that?

24 A. Correct.

25 Q. Doctor, someone, either you or someone from your office

1 had to respond to subpoenas relative to how many IMEs  
2 you do, how many depositions you've done, and how much  
3 income you've made before, is that correct?

4 A. Yes.

5 Q. In fact, I've been one of the recipients of those  
6 subpoenas, so I would like to confirm just some of the  
7 numbers. I believe Mr. Seiferheld went over this with  
8 you just this last summer.

9 In 2011, you performed 496 medical  
10 examinations and 89 depositions, is that correct?

11 A. I don't know.

12 Q. Would you have any reason to refute? And I can hand you  
13 a copy of your deposition.

14 A. No. I recall this line of questioning, so I'll have to  
15 respond that I don't know to each of these questions.  
16 Then of you show me those numbers, I'll agree that they  
17 are accurate to the best of my knowledge. So you can  
18 read the numbers off, but I don't keep a record of that,  
19 so I will not disagree if you have the numbers provided  
20 by the office.

21 Q. Sure. I appreciate that. So what I'm going to do is  
22 I'm going to ask you just a couple questions about them.  
23 Your answers are likely going to be the same.

24 I'm going to hand you a copy of your  
25 deposition transcript from the Morris versus Corporate

1 Mall Services, deposition of Philip J. Mayer taken  
2 August 21, 2014?

3 MS. MAGDICH: What is the case number?

4 MR. TEREBELO: The case number is 12-3712-NI.

5 MS. MAGDICH: Who is the defense attorney on  
6 it?

7 MR. TEREBELO: Defense attorney is Patrick  
8 Kukla.

9 MS. MAGDICH: Anyone other than him?

10 MR. TEREBELO: Nope.

11 BY MR. TEREBELO:

12 Q. At least you were able to confirm for Mr. Seiferheld how  
13 the numbers were accurate in what was provided in 2011,  
14 496 medical evaluations and 89 depositions were  
15 performed; is that correct?

16 A. What I said was that I wouldn't disagree with that if he  
17 had the information. I actually said virtually the same  
18 thing. I wouldn't quarrel with the figures as long as  
19 they were provided from the office.

20 So again, I don't know the numbers. I don't  
21 keep them. He had the numbers. I didn't disagree.

22 Q. So then you don't disagree that in 2011, performing  
23 IMEs, you made \$698,143, is that correct?

24 A. If that is an accurate number, I would not disagree.

25 Q. In 2010, performed 488 evaluations as well as 85



1 depositions, is that correct?

2 A. That is what it says here.

3 Q. You're not disagreeing with those numbers today?

4 A. No, I'm not.

5 Q. You made, in 2010, \$562,985, is that correct?

6 A. That is what the number says, so if it is correct, it's  
7 correct. Again, I'm not disputing this. Personally, I  
8 don't have the knowledge.

9 So again, if these were handed to you from the  
10 office, the answer would be I don't dispute the numbers.

11 Q. Fine. I appreciate that. I have to just go over the  
12 other years with you as well.

13 In 2009, you did 488 evaluations and 85  
14 depositions, is that correct?

15 A. Probably.

16 Q. You made \$562,985, is that correct?

17 A. Probably.

18 Q. In 2008, you performed 614 evaluations and 157  
19 depositions and you made \$525,000, a little bit more  
20 than that, is that correct?

21 A. Probably.

22 Q. It remains consistent in 2013? From the numbers we  
23 talked about?

24 A. There was some downtime due to various hospitalizations  
25 on the part of myself, so I don't know if the numbers

1 would be exactly the same.

2 Q. Was there a considerable drop off? And I hope you're  
3 doing well, by the way.

4 A. I am doing well. I've had some significant surgeries  
5 done. But I think in the balance, it is probably going  
6 to end somewhere around the same, maybe some drop, but  
7 it would not be more than that.

8 Q. What about 2014, consistent with the years we talked  
9 about?

10 A. That's correct. There was downtime in 2014 for other  
11 medical issues as well, and I don't know what the final  
12 numbers were.

13 Q. It seems like in about seven years you've made a little  
14 bit over \$4 million performing these. Would you have  
15 any reason to refute that?

16 A. No.

17 Q. You do these solely on behalf of defense firms and  
18 insurance companies, is that correct?

19 A. Well and employers. And occasionally, I was asked by a  
20 plaintiff's attorney the other day if I would see one of  
21 his clients, and I have no objection to that. It's just  
22 not typically what comes through.

23 Q. You say not typically. I'm assuming about 99 percent of  
24 your work is for defense firms and insurance companies  
25 or employers, someone who is defending a litigation?

1 A. No, I agree. It was just unusual. We had done a  
2 deposition and the plaintiff's attorney stayed around  
3 after it and he said would you see one of my folks? I  
4 want an honest opinion. And I said, sure, I have no  
5 problem with that. But it would be an unusual  
6 occurrence. It is just the way it funnels through the  
7 office at Tri-County.

8 Q. Fair enough. Doctor, before the deposition today, we  
9 actually reviewed your chart, and we saw that there was  
10 some handwritten notes, which have been separated. I'd  
11 like to mark this as Exhibit 2 real quick, please.

12

13 DEPOSITION EXHIBIT #2  
14 WAS MARKED BY THE REPORTER  
15 FOR IDENTIFICATION.

16 BY MR. TEREBELO:

17 Q. I'll hand you what has been marked as Exhibit 2. These  
18 are your own handwritten notes, is that correct?

19 A. Some are and some are not.

20 Q. Can you tell me what in Exhibit 2, and my pen is a blue  
21 pen, can you circle it with my pen what are not your  
22 handwritten notes.

23 A. Well, it is going to be almost the whole page. On the  
24 employment history, job description questionnaire, I  
25 write with a fountain pen, so I'll point out to you, the

May 10, 2013

Marshall Lasser, P.C.  
P.O. Box 2579  
Southfield MI 48037

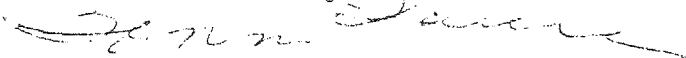
Attention: Marshall Lasser

RE: RYAN THOMAS  
SS#: xxx-xx-6452

Dear Mr. Lasser:

Per your request, I am enclosing Philip Mayer, M.D. 1099 forms.

Sincerely,



Bonnie Gaiera  
Administrator

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no		1 Rents	OMB No 1545-0115		Miscellaneous Income
TRI-COUNTY ASSOCIATES OF MEDICINE (248) 358-0750 32410 W 5MILE RD STE 103 LIVONIA MI 48154		\$	2005		
09/NRL/2005/4/01016 / /001400		2 Royalties	Form 1099-MISC		
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Other income	4 Federal income tax withheld	Copy C For Payer	
38-2364021		\$	\$		
RECIPIENT'S name		5 Fishing boat proceeds	6 Medical and health care payments	For Privacy Act and Paperwork Reduction Act Notice, see the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.	
PHILIP J MAYER MD PC		\$	\$		
Street address (including apt. no.)		7 Nonemployee compensation	8 Substitute payments in lieu of dividends or interest		
36650 FIVE MILE RD SUITE 102		\$ 293760.00	\$		
City, state, and ZIP code		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds		
LIVONIA MI 48154		11	12		
Account number (see instructions)	2nd TIN not	13 Excess golden parachute payments	14 Gross proceeds paid to an attorney		
00140009/NRL A	<input type="checkbox"/>	\$	\$		
16a Section 409A deferrals	15a Section 409A income	16 State tax withheld	17 State/Payer's state no	18 State income	
\$	\$	\$	MI	\$	

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.  TRI-COUNTY ASSOCIATES OF MEDICINE (248) 358-0750 32410 W 5MILE RD STE 103 LIVONIA MI 48154		1. Fees \$	OMB No. 1545-0115  <b>2006</b>		Miscellaneous Income
		2. Royalties \$	Form 1099-MISC		
		3. Other income \$	4. Federal income tax withheld \$		
PAYER'S federal identification number 38-2364021	RECIPIENT'S identification number	5. Fishing boat proceeds \$	6. Medical and health care payments \$	Copy 1 For State Tax Department	
RECIPIENT'S name PHILIP J MAYER MD PC		7. Nonemployee compensation \$ 363772.00	8. Substitute payments in lieu of dividends or interest \$		
Street address (including apt. no.) 15331 LAKESIDE		9. Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10. Drop insurance proceeds \$		
City, state, and ZIP code PLYMOUTH MI 48170		11. [REDACTED]	12. [REDACTED]		
Account number (see instructions) 00140009/NRL A		13. Excess golden parachute payments \$	14. Gross proceeds paid to an attorney \$		
15a. Section 409A deferrals \$	15b. Section 409A income \$	16. State tax withheld \$	17. State/Payer's state no. MI	18. State income \$	

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents		OMB No. 1545-0115	
TRI-COUNTY ASSOCIATES OF MEDICINE 32410 W SMILE RD STE 103 LIVONIA MI 48154 (248) 358-0750		\$		2007	
		2 Royalties		Form 1099-MISC	
		\$		4 Federal income tax withheld	
		3 Other income			
		\$			
PAYER'S record identification number	RECIPIENT'S identification number	5 Fishing boat proceeds		6 Medical and health care payments	
38-2364021		\$		\$	
RECIPIENT'S name		7 Nonemployee compensation		8 Substitute payments in lieu of dividends or interest	
PHILIP J MAYER MD PC		\$		\$	
Street or streets including apt. no.		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale > <input type="checkbox"/>		10 Crop insurance proceeds	
15331 LAKESIDE		525317.00		\$	
City, state, and ZIP code		11		12	
PLYMOUTH MI 48170					
Account number (see instructions)		13 Excess golden parachute payments		14 Gross proceeds paid to an attorney	
00140009/NRL A		\$		\$	
15a Section 409A deferrals	15b Section 409A income	16 State tax withheld		17 State/Payer's state no.	
\$	\$	\$		MI	
		\$		\$	
				18 State income	
				\$	

Miscellaneous Income

Copy 1  
For State Tax  
Department

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents	OMB No. 1545-0115	Miscellaneous Income
TRI-COUNTY ASSOCIATES OF MEDICINE (248) 358-0750 32410 W SMILE RD STE 103 LIVONIA MI 48154		2 Royalties	2008	
CO/NRL/2008/1/01758 / /001400		3 Other income	Form 1099-MISC	
PAYER'S Mailing Identification Number	RECIPIENT'S Identification Number	4 Federal income tax withheld	5 Medical and health care payments	Copy C For Payer
33-2154021				
RECIPIENT'S name		6 Substantiated payments in lieu of dividends or interest	7 Substantiated payments in lieu of dividends or interest	For Privacy Act and Paperwork Reduction Act Notice, see the 2008 General Instructions for Forms 1099, 1098, 5-198, and W-2G.
PHILIP J HAYER MD PC		8 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale	
Street address (including apt. no.) 45331 LAKESIDE		10 Gross insurance proceeds	11 Gross insurance proceeds	
City, state, and ZIP code PLYMOUTH MI 48170		12 Gross proceeds paid to an attorney	13 State income	
Account number (see instructions)		14 Excess golden parachute payments	15 State/Payer's state tax	
00140009/NRL A		16 State tax withheld	17 State/Payer's state tax	
15a Section 509A details	15b Section 509A income	18 State income	19 State income	
\$	\$	\$	\$	

Form 1099-MISC

Department of the Treasury - Internal Revenue Service



☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents	OMB No. 1545-0045	
TRI-COUNTY ASSOCIATES OF MEDICINE 32410 W 5MILE RD STE 103 LIVONIA MI 48154  09/NRL/2009/4/01353 / /001400		\$	2009	
PAYER'S federal identification number 38-2364021		2 Royalties	Form 1099-MISC	
RECIPIENT'S identification number		3 Other income	4 Federal income tax withheld	
Rec P ENT's name PHILIP J MAYER MD PC		\$	\$	
Street address (including apt. no.) 15331 LAKESIDE		5 Farming boat proceeds	6 Medical and health care payments	
City, state, and ZIP code PLYMOUTH MI 48170		\$	\$	
Amount or other (see instructions)		7 Nonemployee compensation	8 Substitute payments in lieu of dividends or interest	
00140009/NRL A		\$ 583856.00	\$	
2nd TIN box		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale	10 Crop insurance proceeds	
15a Section 409A deferrals		11	12	
15b Section 409A rollovers		13 Excess golden parachute payments	14 Gross proceeds paid to an attorney	
\$		\$	\$	
16 State tax withheld		17 State/Payer's state no.	18 State income	
\$		\$	\$	
MI				

Miscellaneous Income

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For Payer

For Privacy Act and Paperwork Reduction Act Notice, see the 2009 General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G.

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.  TRI-COUNTY ASSOCIATES OF MEDICINE (248) 358-0750 32410 W SMILE RD STE 103 LIVONIA MI 48154  09/NRL/2010/4/01151 / /001400		1 Rents \$	2 Royalties \$	3 Other income \$	4 Federal income tax withheld \$	Miscellaneous Income	
PAYER'S federal identification number 38-2364021	RECIPIENT'S identification number	5 Fishing boat proceeds \$	6 Medical and health care payments \$	7 Rental/employee compensation \$ 562985.00	8 Substantive payments in lieu of dividends or interest \$		Copy C For Payer
RECIPIENT'S name PHILIP J MAYER MD PC  Street address (including apt. no.) 15331 LAKESIDE  City, state, and ZIP code PLYMOUTH MI 48170 Account number (see instructions) 00140009/NRL A		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$	11	12	For Privacy Act and Paperwork Reduction Act Notice, see the 2010 General Instructions for Certain Information Returns.	
And EIN not <input type="checkbox"/>		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$	15a Section 409A deferrals \$	15b Section 409A income \$		16 State tax withheld \$
		17 State/Payer's state inc. MI	18 State income \$				

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents		CMB No. 1545-0115	
TRI-COUNTY ASSOCIATES OF MEDICINE (248) 358-0750 32410 W 5MILE RD STE 103 LIVONIA MI 48154		2 Royalties		<b>2011</b> Form 1099-MISC	
		3 Other income			
		4 Federal income tax withheld			
PITT/NRL/2011/4/01095 / /001400		5 Fishing boat proceeds		6 Medical and health care payments	
PAYER'S federal identification number	RECIPIENT'S identification number	7 Nonemployer compensation		8 Substitute payments in lieu of dividends or interest	
38-2364021		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>		10 Crop insurance proceeds	
RECIPIENT'S name		11		12	
PHILIP J HAYER MD PC		13 Excess golden parachute payments		14 Gross proceeds paid to an attorney	
Street address (including apt. no.)		15 State tax withheld		17 State/Payer's state no.	
15331 LAKESIDE		16 State tax withheld		MI	
City, state, and ZIP code		18 State income		S	
PLYMOUTH MI 48170		19 State income		S	
Account number (see instructions)		20 State income		S	
001400PITT/NRL A		21 State income		S	
15a Section 409A deferrals		22 State income		S	
15b Section 409A income		23 State income		S	

Miscellaneous Income

Copy C  
For Payer

For Privacy Act  
and Paperwork  
Reduction Act  
Notice, see the  
2011 General  
Instructions for  
Certain  
Information  
Returns.

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.  TRI-COUNTY ASSOCIATES OF MEDICINE (248) 358-0750 32410 W 5MILE RD STE 103 LIVONIA MI 48154		1 Rents \$	OMB No. 1545-0045  <b>2012</b>  Form 1099-MISC		Miscellaneous Income
		2 Royalties \$	4 Federal income tax withheld \$		
PAYER'S federal identification number  38-2364021	RECIPIENT'S identification number	3 Other income \$	5 Fishing boat proceeds \$	6 Medical and health care payments \$	Copy 1 For State Tax Department
RECIPIENT'S name  PHILIP J HAYER MD PC		7 Nonemployee compensation \$ 737107.00	8 Substitute payments in lieu of dividends or interest \$		
Street address (including apt. no.)  15331 LAKESIDE		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$		
City, state, and ZIP code  PLYMOUTH MI 48170		11	12		
Account number (see instructions)  001400PITT/NRI A		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$		
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State, Payer's state no. MI	18 State income \$	

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

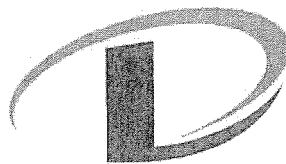
State Copy

Michigan Head & Spine, et al v. Frankenmuth Mutual Ins. Co.

Phillip Friedman, M.D.

March 10, 2015

*Prepared for you by*



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*Firm Number 8548*

1           privileges revoked or suspended?

2       A     No.

3       Q     And you're insured for malpractice for performing  
4           surgery?

5       A     Yes.

6       Q     How long have you been performing evaluations  
7           through Exam Works, which is the facility that you  
8           went through in this case?

9       A     I guess 15 years, ten to 15 years.

10      Q     How many exams a week do you perform for Exam  
11           Works?

12      A     Well, it comes in spurts. There may be some weeks  
13           none, some weeks they'll call up and schedule three,  
14           four a week. It's really hard to say.

15      Q     Doctor, how many other companies like Exam Works do  
16           you perform exams?

17      A     The major companies is Consulting Physicians, MES.

18      Q     MEG?

19      A     Occasionally MEG, occasionally --

20      Q     TEG?

21      A     TEG is what used to be Exam Works. It's the same  
22           thing.

23      Q     Okay. So you performed exams for them when they  
24           were TEG?

25      A     Yes.

1 Q And now you stayed with them?

2 A And they stayed with me.

3 Q However you want to put that, that's fine. Any  
4 others?

5 A There's occasional -- there's a lot of different  
6 companies that, you know, they'll call up and  
7 schedule an exam.

8 Q Doctor, I reviewed a deposition that you gave back  
9 in 2010 and you testified in 2010 that you were  
10 doing exams for Consulting Physicians for about ten  
11 to 15 years at that time.

12 A Yes.

13 Q So now it's closer to 20 years?

14 A Yeah. They're the first company I started doing it  
15 with.

16 Q And you were doing about 50 to 75 exams for  
17 Consulting Physicians a year in 2010, okay? Is that  
18 still the same today, pretty consistent?

19 A Yes.

20 Q Any increase?

21 A No, it's about the same.

22 Q And you testified in 2010 that you were making  
23 \$350,000 to \$400,000 a year performing these types  
24 of exams. Do you recall that?

25 A That sounds right.

1 Q Has this remained consistent since then over the  
2 past five years?

3 A It's probably gone up.

4 Q Okay. And how much has it gone up from 350 to  
5 \$400,000? I'm just talking about forensic work.

6 A Maybe \$500,000.

7 Q So in 2014, were you making \$500,000 a year, would  
8 you say?

9 A Probably, yes.

10 Q And what about 2013?

11 A Close to the same.

12 Q Close to \$500,000?

13 A Yeah.

14 Q What about 2012?

15 A I'm guessing 400, 450, you know, somewhere in that  
16 range.

17 Q So you would agree that at least in the last five  
18 years, your income from doing this type of work,  
19 forensic work has steadily increased to up to half a  
20 million a year, correct?

21 A Yes.

22 Q And when you do these types of evaluations, the vast  
23 majority are for insurance companies or at the  
24 request of insurance defense attorneys, correct?

25 A Yes.



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

ANTONETA DJOLJAJ,

Plaintiff,

-vs-

Case No. 08-3256-NI

KARAM KHEMMERO, NORA KHEMMORO  
and SALLY KHEMMORO,

Defendants.

---

The Videotaped Deposition of SCOTT T. MONSON, M.D.,  
taken before Marlene L. Olech, Certified Shorthand  
Reporter and Notary Public in and for the County of Wayne,  
State of Michigan, at MEDICAL EVALUATION SPECIALISTS, 5700  
East 11 Mile Road, Warren, Michigan, on Monday, the 18th  
Day of January, 2010, at 2:27 p.m.

APPEARANCES:

GOODMAN ACKER , PC  
Attorneys at Law  
17000 West Ten Mile Road, Second Floor  
Southfield, Michigan 48075  
By: KUJTIM SULOLLI, ESQ.,

Appearing on behalf of the Plaintiff,

ALLSTATE & ENCOMPASS STAFF COUNSEL  
27555 Executive Drive, Suite 270  
Farmington Hills, Michigan 48331  
By: ROBERT L. FIX, ESQ.,

Appearing on behalf of the Defendants.

ALSO PRESENT: George Larkins, Videographer.

1 Q All right. And essentially what you've been doing  
2 today in testifying in response to Mr. Fix's  
3 questions is essentially reading from your report in  
4 terms of what your findings were?  
5 A To confirm what my findings were.  
6 Q Right.  
7 A I mean I just read this five minutes ago. But yes,  
8 I'm looking at all the papers and the reports.  
9 Q Well, that's the point I guess I'm making is that  
10 without reviewing your report, you didn't remember  
11 what this examination involved and what your findings  
12 were?  
13 A No, I wouldn't remember in that time frame.  
14 Q All right. And in terms of these exams that you do  
15 that are requested that are in litigation, would you  
16 agree with me that approximately 99 percent of them  
17 are done for the defense?  
18 A None for me because I'm paid to do the evaluation.  
19 They're done at the request of the defense.  
20 Q Sure.  
21 A They don't always like what I tell them, but yes. I  
22 have done them at the request of plaintiffs when they  
23 send them, but that's rare.  
24 Q But that's been very rare?  
25 A Yeah. I've done some.

1 Q All right.  
2 A But it's pretty rare.  
3 Q And you've been performing these exams for 20 plus  
4 years?  
5 A Since 1981.  
6 Q All right. I don't want to age you but ---  
7 A No. You're right. It's amazing how fast it's gone.  
8 28 and-a-half years since I've been in practice. And  
9 I started doing these the day I came out.  
10 Q And as you stated, you performed this examination  
11 through MES, which is a facility in Warren where  
12 we're actually taking your deposition today, correct?  
13 A Yes.  
14 Q And what MES essentially does is facilitates these  
15 examinations between defense attorneys or similar  
16 type entities and the doctors?  
17 A There's more to it than that. I mean a lot of the  
18 things I see are what are called open comp. The  
19 company wants to know what's wrong with this fellow,  
20 what do we do, how do we treat him. But what you've  
21 said was accurate as well.  
22 Q And I think you've previously testified that MES is  
23 sort of the McDonalds of evaluation companies in that  
24 MES is located in different states and essentially  
25 they're performing the same task as they did in this

1 case?  
2 A They're a national organization, they're in a number  
3 of different states and regions, yeah.  
4 Q All right. And then you performed these examinations  
5 through MES and I think also another facility called  
6 Med Ex that's actually in your office in Harper  
7 Woods?  
8 A That's --- I do do those as well.  
9 Q All right.  
10 A As of late that's about every other week.  
11 Q All right. And then you would agree with me that  
12 these examinations that you perform is a fairly  
13 lucrative business for you?  
14 A I make money doing it. I wouldn't do it if I didn't.  
15 Q Well, I would assume you wouldn't either, Doctor.  
16 And I think you mentioned in the past few years it's  
17 been a little slow in terms of the exams you do,  
18 maybe about 10, maybe 15 a week?  
19 A I don't think it's that high. I think it's --- let's  
20 see. I had two today and this dep. And I'm counting  
21 them all as equal. So three, tomorrow I think I have  
22 three and I may have one or two on Thursday at the  
23 office. So yeah, ten's probably accurate. Somewhere  
24 around there.  
25 Q And then a few years back you were doing as many as

1 20 exams a week approximately?  
2 A 25. Yeah, 20, 25.  
3 Q And you testified ---  
4 A That was number of years back incidentally. The last  
5 three years it's been going down yearly.  
6 Q And you testified that you perform these examinations  
7 I think you said two half days per week, correct?  
8 A Two days --- two half days a week here, I'm in the  
9 office a half day if it's there, if there's people  
10 scheduled to see.  
11 Q So essentially you perform these examinations over  
12 about a day and-a-half a week?  
13 A Yeah.  
14 Q Okay.  
15 A I think that's fair. At least that's where my time's  
16 allotted.  
17 Q Sure. And as you testified, you do get paid for  
18 these exams. And I think your charge through MES is  
19 \$320 per exam; is that correct?  
20 A I think that's accurate.  
21 Q And I think ---  
22 A No, I think it's 315 for the IME and I think it's 320  
23 for the dep.  
24 Q And I think your charge is 225 if it's through Med  
25 Ex, which is in your office?

1 A That's correct.  
 2 Q All right. And then depositions you do about three a  
 3 week?  
 4 A Not anymore.  
 5 Q All right. It used to be three to five a week?  
 6 A It's about one every third week now.  
 7 Q Okay.  
 8 A Every fourth week even.  
 9 Q And I think your charge is how much?  
 10 A Here I get 300 and what did I say 20. I think it's  
 11 320 or 325. I'd have to look, but it's one of the  
 12 two.  
 13 Q And when you were doing up to 20 exams, a week you  
 14 were earning approximately \$350,000 a year or so?  
 15 Does that sound about right?  
 16 A That's high.  
 17 Q Well, I mean I can pull a prior dep testimony if you  
 18 want but ---  
 19 A At the peak ten, 12 years ago doing it at both  
 20 facilities, the gross was somewhere around 300.  
 21 Q All right. And then you'd agree with me that over  
 22 the years that you've been performing these  
 23 examinations, I think maybe 20 some --- 20 plus  
 24 years, you've probably earned approximately seven to  
 25 eight million dollars?

1 A Yeah.  
 2 Q All right. And do you recall how long this specific  
 3 examination was involving Mrs. Djoljaj?  
 4 A I don't. I don't punch a clock. But I'd guess  
 5 somewhere around 15 minutes. That's typical, 15 to  
 6 20 minutes.  
 7 Q If you previously testified that your exams take  
 8 anywhere between five and ten minutes ---  
 9 A Well, you're talking exam only part?  
 10 Q Exam only part.  
 11 A I'm talking 15 to 20 minutes total.  
 12 Q Okay.  
 13 A So typically it's about seven and-a-half, eight  
 14 minutes.  
 15 Q Okay.  
 16 A For the exam part.  
 17 Q All right. When you say 15 --- your exam is 15 to 20  
 18 minutes total, you're also talking ---  
 19 A I'm talking about the history as well.  
 20 Q All right. Just purely exam, we're talking about  
 21 seven and-a-half to eight and-a-half minutes?  
 22 A Something like that.  
 23 Q All right. Do you remember when you were retained in  
 24 this case or requested to perform the examination?  
 25 A I have no idea when it was scheduled. It's

1 scheduled through MES and I come in and I have a  
 2 weekly schedule when I come in for the Monday and  
 3 Tuesday afternoons. I don't know when they did that.  
 4 Q I would assume that that request would have come in  
 5 fairly --- right around the time that you actually  
 6 performed your examination in July?  
 7 A I can't tell you. I don't know when they come in.  
 8 Q All right. In terms of --- you may not know this,  
 9 but in this case the defense has filed some papers  
 10 with the court, specifically a witness list back in  
 11 August of 2008 listing you as a witness in this case.  
 12 Now first of all, did you know that?  
 13 A I didn't.  
 14 Q All right. I assume you would not have been  
 15 requested to perform the examination back in August  
 16 of '08, nearly a year prior to when you actually did  
 17 the exam?  
 18 A I would have to tell you, the scheduling is done  
 19 through MES. When this individual was scheduled to  
 20 be seen, I have no idea.  
 21 Q Do you know how it is that the defense would know  
 22 that you were going to give a favorable opinion back  
 23 in August of 2008 when you were likely never even  
 24 contacted yet in this matter?  
 25 ~~MR. FIX: Objection, as to~~

1 ~~mischaracterization.~~  
 2 THE WITNESS: I can guarantee you I  
 3 wasn't contacted. As I said, when I came in this  
 4 morning, I didn't know how many people I had to see,  
 5 who they were here for. I don't do the scheduling.  
 6 Q (Continuing by Mr. Sulolli:) My point is this,  
 7 Doctor. You're used quite a bit by the defense  
 8 industry; isn't that correct?  
 9 A I assume --- I've done a number of evaluations at the  
 10 request of defense attorneys.  
 11 Q And you're requested as much as you are in terms of  
 12 producing the amount of income that you've earned  
 13 over the years is because you always find in favor of  
 14 the defense in terms of you always find that the  
 15 claimant or the plaintiff either was not injured in  
 16 the accident or was not injured as severely as the  
 17 plaintiff is claiming?  
 18 A That's simply not true. I do not always find that.  
 19 In fact, many cases. I'd say it breaks down to about  
 20 a third, a third and a third. A third I find nothing  
 21 because there's nothing there, a third I find  
 22 something but it's there for other reasons and a  
 23 third of the patients I see are there for genuine  
 24 incident related problems. I --- to say --- I do not  
 25 call them any other way than the way I see them and I